

**BEFORE THE LAND USE HEARINGS EXAMINER  
CLARK COUNTY, WASHINGTON**

REGARDING THE APPLICATION FOR A CONDITIONAL	)	<b>FINAL ORDER</b>
USE PERMIT AND SITE PLAN REVIEW APPROVALS TO	)	
CONSTRUCT A NEW 61,650 SQUARE FOOT	)	<b>ORCHARDS</b>
ELEMENTARY SCHOOL BUILDING TO REPLACE THE	)	<b>ELEMENTARY</b>
EXISTING 38,000 SQUARE FOOT SCHOOL BUILDING	)	<b>SCHOOL</b>
IN THE R1-6 AND R1-18 ZONING DISTRICTS IN THE	)	<b>CUP2004-00006,</b>
UNINCORPORATED CLARK COUNTY, WA.	)	<b>PSR2004-00044,</b>
		<b>SEP2004-00121</b>

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***APPROVED WITH CONDITIONS  
SEPA APPEAL DENIED***

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**INTRODUCTION**

The applicant is requesting a Conditional Use Permit (CUP) and Site Plan Review approvals to rebuild Orchards Elementary School. The applicant will demolish the existing school building (approximately 38,000 square feet) that was built in 1953 to accommodate 500 students, which by May 2004 had increased to 593 students. The replacement school is a 61,650 square foot building. The first floor of the two stories new school will house the administration and support staff, some classrooms, the gymnasium, commons and an attached play area. The second story will house additional classrooms, cooperative learning center, and media. Additionally, the applicant is proposing to add a 4,000 square foot modular Family Resource Center and has identified space for the potential location of two 4,000 square foot modular classroom buildings (when needed) and some storage facilities. The size of the school buildings (including the modular classrooms), when completed, will be approximately 69,650 square feet. The anticipated student population is 650 students in grades K-5, and the school will employ 63 teaching and auxiliary staff.

The applicant also proposes to provide 147 off-street parking spaces, 8 of which would be reserved for the physically handicapped persons. When completed, the project will result in more than 25 percent increase in the gross floor area of the school building and off-street parking spaces. The approximately 13.11 acre site is zoned R1-6 and R-18.

**Location:** 7000 NE 117th Avenue (SR 503); Parcel Number(s): Tax Lots 1/2 (157491) and 3/2 (157494) in the NW ¼ of

Section 10, Township 2 North, Range 2 East of the Willamette Meridian.

**Applicant:** Evergreen School District #114  
Attn.: Reg Martinson  
13501 NE 28th Street  
Vancouver, WA 98682

**Property Owner:** Evergreen School District #114  
P. O. Box 8910  
Vancouver, WA 98682

**Comp Plan:** Public Facility (PF)

**Applicable Laws:** Clark County Code Chapter 40.350 (Transportation), Section 40.350.020 (Transportation Concurrency), 40.380 (Storm Water Drainage and Erosion Control), 15.12 (Fire Code), Chapter 40.570 (SEPA), 40.220.010 (R1-6), 40.220.020 (R-18), 40.520.030 (Conditional Use Permit), 40.520.040 (Site Plan Review), 40.520.040 (E) (Site Plan Review Approval Standards), 40.320.010 (Landscaping and Screening Design), 40.340.010 (Parking and Loading Standards), 40.340.020 (Access and Circulation Standards), 40.360 (Solid Waste Storage), 40.370.020 (Water Supply), 40.370.010 (Sewer Connection)

**Site Overview:** The predominant vegetation on the site comprises field grass on the playground. Except for a cyclone fence that surrounds the property, there are very few trees on the premises. The following table shows the comprehensive plan designation, zoning, and current land use on the site and on the abutting properties:

Table 1: Comprehensive Plan, Zoning and Current Land Use

<b>Compa ss</b>	<b>Comp Plan</b>	<b>Zoning</b>	<b>Current Land Use</b>
Site	Public Facility (PF)	R1-6 and R-18	Flat undulating topography, Orchards Elementary School buildings, 9 modular classrooms/structures, offices, parking spaces, play ground and cyclone fence around the property.
North	Urban Low (UL) / Urban Medium (UM)	R1-6 / R-18	Mini storage facility, Greenway Terrace mobile home park some trees and vegetation along the property boundary.

East	Community Commercial (C-3) / Light Industrial (ML)	C-3 / ML	NE 117th Avenue (SR 503) vacant commercial and industrial lands.
South	UL / UM / ML	R1-7.5 / ML	Single-family housing on the southeast corner, some commercial activities on industrial lands.
West	UL / UM	R1-6 / R-1-7.5	Developed with single-family housing – Rose Valley and York Town Subdivisions.

### **HEARING AND RECORD**

The Public Hearing on this matter was held on October 14, 2004. The record was kept for two weeks for the applicant to respond to the traffic study, cul-de-sac and utility issues. Staff and the appellant then were granted two weeks to review the applicant's response. The applicant then had one week for final rebuttal and the record closed on November 19. A record of all testimony received into the record is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Clark County Department of Community Development.

The Examiner has conducted an unaccompanied site visit prior to the Hearing.

#### **Public Comments:**

The county received comments from Michael J. Walker, the General Manager of Greenway Terrace L.L.C., (August 28, 2004 - Exhibit 10) regarding the following issues:

Traffic: Mr. Walker is concerned that traffic from the school will adversely impact traffic at the cul-de-sac of NE 71st Street. Mr. Walker reasons that the extension of NE 69th Street through the school property, easterly to intersect NE 71st Street at the cul-de-sac, will increase traffic on NE 71st Street, especially since many vehicles from the commercial center to the north use NE 71st Street for ingress and egress. Additionally, Mr. Walker questions whether, as proposed, the half-width road improvement on NE 69th Street would be adequate to support traffic from the school as well as traffic from the public.

Noise: Mr. Walker also indicates that potentially, increased noise from the school could adversely impact the residents of Greenway Terrace Mobile Home Park. He believes that the new school facilities would make the school attractive for sports and other after school events and activities, which could result in increased noise in the area. He states that most of the residents at the mobile home park are elderly citizen, who have resided there for several years, and are by law (no legal reference is provided for this assertion), are entitled to quiet enjoyment and peaceful environment.<sup>1</sup>

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<sup>1</sup> Quiet enjoyment and peaceful environment are typically responsibilities of the Landlord vis a vis his Tenants and have specific meaning within landlord tenant law.

(Staff Response to this letter is on Page 4 of the Staff Report. The Examiner addresses these issues in the findings)

**SEPA Appeal:**

On October 13, 2004 Steven Shell filed a SEPA appeal on behalf of the Greenway Terrace LLC (Exhibit 19). The appeal challenge County's DNS, based on 4 issues:

1. Transportation Cul-de-sac: The cul-de-sac at the West end of 71<sup>st</sup> which will provide the west side access to the school is now overused will become dysfunctional with addition of school traffic. It is also unsafe. No study has been done to determine a proper design, not identified in the SEPA checklist and no mitigation is proposed.
2. Transportation - Safety and Efficiency: The 20-foot half street will be unsafe for two-way traffic involving school buses, no analysis of cut-through traffic using the new 69<sup>th</sup> (adding more pressure on the cul-de-sac). The issue is not addressed in the check list and not mitigated.
3. Noise: The project does not minimize noise impacts that will degrade housing livability from the proximity of the playground and access road to the residential units.
4. Utilities: In order to construct a road connecting the west end of 71<sup>st</sup> with 69<sup>th</sup> the applicant will have to cross an unrestricted utility easement which provides water and sewer to the Greenway property and which are necessary to serve the 78 dwellings. Past construction has seriously degraded these utilities and the problem has not been identified or addressed by the County. (See SEPA findings below for the resolution of these issues).

**Hearing:**

Michael Uduk, representing the County, provided an overview of this application and its associated staff report. He noted that an appeal of the SEPA determination of non-significance has been filed by Steven Schell on behalf of the neighborhood association. Issues identified in the staff report include potential noise issues, landscaping on NE 69<sup>th</sup> Street, the boundary line adjustment, the circulation plan and the SEPA appeal. Paul Knox of County engineering staff addressed the circulation plan issue, noting that it has to do with the lack of an east-west connection in this neighborhood. Early in the pre-application process, we identified the need for that connection; the applicant has provided a plan that addresses that issue. There is a typo in the third sentence of Page 4; it should be NE 69<sup>th</sup> rather than NE 67<sup>th</sup>. Staff is recommending approval, subject to the conditions identified in the staff report.

Vaughn Lein, LSW Architects, representing the applicant, said the applicant has worked closely with staff and agrees with most of the conditions in the staff report. He offered a few minor corrections: on Page 4, 147 parking spaces, 8 handicapped, will be built. Right above that, on the same page, it says the applicant will demolish the

existing school, but the district actually plans to demolish only 11,000 square feet of that building, after which it will be declared surplus property and sold. In response to a question from the Examiner, Mr. Lein indicated that the east-west connection road is located in the only feasible area to connect to SR 503 – such access along the south side of the property is not feasible. Locating the road along the south side of the property would lead to a greater amount of impervious surface, Mr. Knox added, and would be a pretty circuitous route, with little added benefit.

Mr. Lein continued that on to Page 5, under the existing zoning matrix, it is R1-7.5 only to the South and West. On Page 11, the second paragraph, they refer to an elementary school as a middle school; the same is true on Page 7. Under Finding 3, it needs to specify that only 11,000 square feet will be demolished; it's 147, rather than 142, parking places (this appears one other place). Under Finding 9, it should be 8 handicapped parking places. On Page 13, Finding 3, this conflicts with Finding A-7 on Page 17. Here it says it improves fire flow; under Condition A-7, it says adequate fire flow is not available, so we protest that. Also on Page 13, it refers to Hazel sewer district, but it's actually Hazel Dell sewer district. On Page 18, under C-1, criteria A, those are L3s. We understand some of the concerns there, but L3 requires a 6-foot-high sight-obscuring fence. We're concerned about safety; in all the schools we've ever done, an L3 has never been placed along the street side. We think that is overkill in terms of trying to protect the privacy of the neighbors to the north; the district has owned this property for many years. However, you are putting the bus turnaround adjacent to the northern property line, the Examiner observed. True, Mr. Lein replied. He noted that there are grading issues associated with this site – we feel that the change in grade, plus L2 buffering, should be adequate to alleviate the neighbors' concerns. Perhaps I could suggest a partial L3 buffer along the bus turnaround, since that is the neighbors' primary concern, the Examiner said.

One other issue, Mr. Lein continued – in the separate staff report for engineering review, on Page 2 of the findings, there is a criteria for the full-street improvements on the west side of the parcel. We currently show a sidewalk on the south side of the road; engineering staff is requiring a sidewalk on the north side of the property. Our concern is that the children walking on that side of the road would then have to cross the street on a curve, which creates a safety issue, in our view. We would prefer to keep the kids on the south side of the street. At some point, when the road is finished, the kids on the north sidewalk would still have to cross the street to get to the school, said the Examiner. Perhaps, Mr. Lein replied.

Finally, with respect to the SEPA appeal, we feel that the information provided here doesn't really address the true issues we've had to respond to: the transportation cul-de-sac, the 20-foot half-street mandated by Clark County, noise – this has long been a school site and will continue to be a school site. The buses are the only thing that will be in a different location. With respect to our impact on utilities for properties to the north, we're currently bringing in water from the south to the north, then west. The sanitary sewer will have a pump station at the east side of the bus turnaround, and will

flow into an existing line. We are not impacting the utilities for the properties to the north.

**Public Testimony:**

Steve Schell, representing several residents in Greenway Terrace, introduced Shauna Kuhnke, manager of the Greenway Estates, who said that she is concerned about transportation safety on 71<sup>st</sup>; there have been several near-misses. We're concerned about child safety once construction begins. We are also concerned about added noise from construction and from the relocated bus turnaround. Utilities are a concern, because construction will take place directly over the water, sewer and electrical connections for the Greenway Terrace Estates, and we have had problems with unplanned outages in the past. Increased foot traffic is also a concern.

Debra LeFever, a resident of Greenway Terrace, noted that she starts her day at 5:30AM, and provides a service walking children from the mobile home park to school. Currently there is only one place where the kids can access the school. Since Loews and Boston Pizza were built, traffic has increased 50%. My biggest concern is the safety of the children for whom I am legally responsible. When construction starts, there will be no more access for the kids from the park to enter the school, so what are the kids supposed to do? No one seems to have any idea. Would you be satisfied if construction takes place when school is out, during the summer? The Examiner asked. That might be OK, LeFever replied. Once the school is built, there needs to be access to the school from the park.

Vernon Butts, another resident of the mobile home park, said he is concerned about traffic from the construction vehicles, as well as the school buses. People coming out of the two driveways from Loew's tend to ignore the stop signs; I've had several close calls myself. The major problem is the extra traffic due to construction and, once the school is finished, from school buses and parents.

Jacqueline Lynch, another mobile park resident, said she is concerned with ensuring that there is adequate fencing to protect mobile home property. Also, the cul-de-sac is already a very dangerous place; as far as I'm concerned, we don't need that extra traffic. There should be a fence or barrier on the north side of that street if there is going to be a connection to 69<sup>th</sup> Street. The additional traffic referenced by the previous testimony is also a concern, she said.

Brent Ahrend, a Group McKenzie traffic engineer, said he has prepared a letter, which he introduced to the record (Exhibit 21). In summary, he said he has some concerns about the traffic study and circulation plan prepared by the applicant. The first thing I noticed was that the traffic analysis had the wrong square footage for the school; the actual increase in size, including modular buildings, is 31,000, rather than 23,000, square feet. If most of the current building is going to remain, you can't take credit for that, he said. The only intersection analyzed was the signalized intersection at 117<sup>th</sup> and 71<sup>st</sup> – the cul-de-sac was not analyzed. The traffic volumes on 71<sup>st</sup> seem a little

low in the traffic study. Also, the traffic study does not address the new east-west connector road – there is no accounting for cut-through traffic from Loew's and other businesses. Those are serious enough issues that a re-analysis may be warranted. While schools are exempt from concurrency requirements, they're not exempt from safety requirements. He raised a concern about the adequacy of the 20-foot road width specified in the staff report, as well as its length. The report does not address the current classification of 71<sup>st</sup>; we also have some concern about connectivity, and the proposed 90-degree bend on the new connector road. We would prefer that 71<sup>st</sup> curve down to 69<sup>th</sup>, rather than a T-intersection. Now would be a good time to realign that. Access to the mobile home park could be realigned; it should be possible to channelize traffic around the cul-de-sac, using a roundabout approach. Also, the driveways in the cul-de-sac do not meet County spacing standards. Finally, the staff report refers to the access road between the cul-de-sac and 69<sup>th</sup> as temporary; however, it still needs to be built to County standards.

On the cut-through traffic issue, said the Examiner, would that alleviate the impact of school traffic on 71<sup>st</sup>? Looking at the boundaries of the school, it looks as though about 20% of the students would come from the west; the rest would come through the highway, Ahrend replied.

Mike Walker, manager of Greenway Terrace (Exhibit 25), said his first concern is that the utilities that service his property run west from 117<sup>th</sup> and into the trailer park. Before that property was sold, it housed a portion of the trailer park; water, sewer, electricity, cable and phone run through there. There have been previous problems during the construction of Lowe's with heavy equipment breaking our water lines. When the property was sold, it was agreed that the lines would be moved; however, that hasn't happened. The utility lines need to be moved before the access road is constructed.

Mr. Schell then provided a closing argument (See Exhibit 24). Our main concerns had to do with transportation and the cul-de-sac, he said. The difficulty is that, from the north, the Lowe's intersection comes in; the mobile home park accesses from the west; there is also access for Boston Pizza. There have already been several near misses. Something needs to be done with that intersection, and that solution isn't what the County and the applicant are proposing. The curves currently don't meet the standards for a neighborhood circulator; we've laid out the specific citations where the violations occur. (See Exhibit 24, page 3).

With respect to the utilities problem, Mr. Schell submitted Walker's testimony to the record. The concern is that there is an unrestricted easement; the County can't put in its road without the consent of the easement holder, Greenway Terrace LLC. He said what is needed is an engineer's report showing how the utility lines can be realigned. The road cannot work as structured without consent, and without dealing with this issue.

With respect to the 20-foot roadway, we would suggest that, rather than L3 landscaping, there needs to be L5 – a berm. The argument has been made that a school already exists, but a school does not exist in this location. The residents have a legitimate concern about shortcuts through their property, as well as noise. We have suggested some language about how to solve this problem. Greenway terrace is willing to work with the school district on this issue.

The Examiner noted that, at this point, the County sees the mobile home park as underdeveloped. You can't put a berm there unless 69<sup>th</sup> is moved farther south, and the other half-width of the road is constructed. Mr. Schell replied that Greenway terrace has no intention of changing the use of its property; there are 76 homes, and some residents have been there more than 20 years. The mobile park owner feels the park is a legitimate use, and supports the residents in this matter. Some solution needs to be worked out that meets both their needs and the County's. In response to a question, Mr. Schell said the berm needs to be at least 6 feet high, adequately landscaped, and located on the north side of the road.

With respect to the SEPA challenge, this centers around the idea that adequate solutions haven't been made at this point. The owner of Greenway Terrace is willing to work with the County and the school district to craft a solution that works, he said; he proposed that the record be left open for at least two weeks to attempt to craft such a solution.

The Examiner agreed that some of the issues raised at tonight's hearing deserve further conversation.

**Staff Response:**

Mr. Uduk indicated that Mr. Lein has said the district will be demolishing only a portion of the school building. Staff was led to believe that this will be a replacement school, with the former school demolished. The site plan we reviewed does not show that any of the present structures would be retained. I don't understand whether the site plan is being revised. This site plan does not include the previous school buildings, said the Examiner; the district has merely said that a portion of the old building would be demolished to allow the connector road to be constructed. I agree that this may create a minor issue with the traffic analysis.

The other issue Mr. Lein raised has to do with the number of parking spaces provided, said Uduk; in the site plan, we see 142 parking spaces, not 147, so that is what is in the staff report. We also need to look at the SEPA appeal. Mr. Knox then testified that from a technical perspective, some of the traffic problems referred to in the appeal already exist – the Lowe's traffic, for example, and that from Greenway Terrace. The other condition the Examiner needs to be aware of is that traffic to and from the school also already exists. With respect to noise impacts, staff recognizes that noise is a concern for the neighborhood; hence conditions of approval covering landscaping along NE 69<sup>th</sup> Street, and Conditions D1 and D2, which limit the hours of sporting

activities. With respect to the utility concerns, the neighbors have failed to provide supporting documentation that establish these concerns. If problems occur, it will be the applicant's responsibility to remedy those.

In support of his rebuttal to the SEPA challenge Mr. Uduk noted that additional review by engineering at final site plan should be adequate to alleviate these concerns. Staff is recommending that the examiner deny the SEPA appeal, and approve this application, subject to the conditions of approval in the staff report.

Mr. Knox argued that staff does see that portion of the road which goes from the northeast corner of the site as temporary, which will be corrected as additional development takes place. The applicant already feels that the conditions staff is requiring are probably more than he should have to bear. We often find ourselves in the position of supporting solutions which are less than optimal, but the best available, when it comes to road construction. He noted that, in his review of the appellant's submittal, in his view, the level of traffic service provided is actually very high. We're trying to limit the number of accesses from the state highway. The current condition, in terms of entering and exiting the existing school facility, is less than optimal; that situation will be remedied, at least somewhat, when the new school is constructed. Is this a perfect solution? No. But we have already placed considerable burden on the applicant.

What evidence do you have for your assertion that this is only a temporary solution? The Examiner asked. Also, there have been a number of concerns related to safety during construction, which are often mitigated through SEPA requirements relating to construction hours etc. I am impressed by the fact that how the cul-de-sac works could probably be improved; I would like to see an engineering review of this proposal, because it strikes me that they have put forward an idea that is supported by some engineering judgment. Mr. Knox said he has no problem with holding the record open to allow engineering review of this proposal. He added that there are a number of properties near the school that will likely be redeveloped; we feel that is very likely to occur, regardless of the plans the owner of Greenway Terrace may have.

Safety issues are difficult, with respect to construction, Mr. Knox continued, most of the construction will occur during the summer, but there will be some overlap with the school year. We will be reviewing the safety proposals during final engineering review, he said. Finally, with regard to the existing utilities, we heard that part of the sales agreement specified that the utilities would be moved, and that agreement should be enforced by the appellants. Our development standards specify that existing utilities must be shown, to the degree possible.

**Applicant Rebuttal:**

Mr. Lein said that, with respect to the SEPA appeal, one concern is the construction of the road itself; that will be a summer construction project. He noted that the applicant has an agreement to construct a temporary construction traffic access road from the

signalized intersection on NE 71<sup>st</sup>. With respect to student safety, the district will post guards as necessary; safe student access is paramount in the district's mind. All students will be bused during construction; there will be no school access from 69<sup>th</sup>. With respect to the traffic study that was based on the new numbers of students from the new facility; it did not attempt to use the figures from the old school. There was no accident history we could find for the cul-de-sac. With respect to the traffic analysis not addressing the new east-west traffic, our first study did not address that; however, we relied on County staff's analysis. He described the access agreements that will allow the connection to the cul-de-sac. The situation could change in the future, but we don't know how that may change. With respect to the concern about the length of 69<sup>th</sup>, the district is willing to add speed bumps and other traffic control devices. With respect to the concern about the utilities, we would require utility locates on any work we do. We will forewarn the contractor that there are utilities in the area, and will work with Greenway Terrace on this issue. However, it is not the applicant's responsibility to move those utilities, if that was part of a sales agreement.

With respect to the recommendation of an L5 berm to be located on the north side of the road, the district does not own that property, and we truly don't feel that the school being in this location will cause new noise problems. We are willing to consider additional mitigation along the bus turnaround, but the noise from the playgrounds will not increase.

With respect to how the applicant would like to proceed with the analysis of the cul-de-sac redesign, Mr. Lein said the district does not own the property between the cul-de-sac and the school. We agreed to put this resolution in place, at staff's recommendation. So you're putting the access road in a somewhat awkward place to skirt that property? The Examiner asked. Part of the issue there is that this is an existing point of access, Mr. Knox interjected – our understanding is that the district needed the agreement of another party to construct that access, and that was his preferred point of access.

The Examiner asked staff and the applicant to respond to the critique of the traffic study, as well as to the cul-de-sac redesign proposal. The Examiner said the record on this case will remain open for two weeks for the applicant to respond to the traffic study, cul-de-sac and utility issues raised tonight. Staff and the appellant will then have two weeks to review the applicant's response. The applicant will then have one week to respond, which means that the record on this case will close on November 19. We are concerned about all of the issues surrounding the access of the cul-de-sac to 69<sup>th</sup>, the examiner said.

**Post Hearing Record:**

**Exhibit 28** - On October 15, the opponent's attorney Mr. Schell requested a chance to respond to the applicant's review of the issues presented, without delaying the overall time frame work. The Examiner agreed.

**Exhibit 29** - On October 29, the School District provided a response. In that response Mr. Lien makes the following key points:

- The access for the school district through the TMT property is uncertain; consequently the District has decided to modify their eastern access to the school by a design that maintains all road construction on the District's property. This will require a right-in and right-out only exit/access at the new 69th Street where the existing northern driveway from school enters SR 503. This, the applicant argues renders all of cul-de-sac related issues as well as the issues relating to the easement and damage to water/sewer line moot.
- The access may be modified in the future and is likely to be temporary as surrounding property develops. Only when the surrounding property is presented for development will the true impact be known unto 71<sup>st</sup> Street cul-de-sac and the respective signal unto SR 503.
- The applicant submitted revised traffic calculation from Charbonneau addressing the increased square footage calculations raised by the opponents to the effect that LOS at the proposed intersection of 69<sup>th</sup> and SR 503 would be at C at all relevant peaks. Safety on 69<sup>th</sup> will be enhanced with a 25 mile an hour speed limit, school zone signs and traffic calming devices as necessary. Cut through traffic was not perceived as a major issue because of turns on 69<sup>th</sup> as well as better through alternatives.
- Safety of children crossing from Greenway Mobile Home park during construction would be addressed with signage at designated crossing and no traffic construction traffic in the designated crossing areas at relevant student crossing times.
- Until the old school is demolished the bus and parent drop-off will access the school from the west. During that time only school related traffic will be allowed on 69<sup>th</sup>.
- The Greenway request for L-5 landscaping with a berm was rejected. The district argues that L-2 provides ample buffering and ensures student safety. It has been used in similar circumstances throughout the district and the street will provide additional buffer. Like the Staff the district speculates that the mobile home park will yield to a higher use development.
- The District agrees with the Staff, at least at the hearing, that a SEPA appeal does not provide the ability to impose additional conditions as part of the conditional use process.

**Exhibit 30** - The SEPA appellants responded on November 5, 2004 and made the following points:

- Greenway Terrace and the Residents remain concerned that the problem of proper access to SR503 has simply been postponed. It appears, based on the 69,650 square feet of construction and demolition of the existing school (and recognizing that some trips will access the site from 69th), that there will be more than 670 right turn accesses onto or off of SR503 as a result of this development. This is a “significant change” under and a new permit is required under the law. WAC 468-51-110. The following condition of approval is proposed”

“Prior to the commencement of any demolition or construction on either of the new school site or of the existing school, applicant will receive and provide the County with necessary authorization from the Washington Department of Transportation for intensification of use of the current school district driveway access. If the Washington Department of Transportation refuses to provide the necessary permit or permit change or the condition(s) imposed thereon are unacceptable to the applicant, then the applicant shall seek an amendment to this approval using the same process as was mandated for the original application.”

- Concerns remain about infringement on Greenway Terrace's blanket easement and the following condition of approval is requested:

“Applicant shall not use the 71st cul-de-sac or any access to 71st to provide any construction, temporary or permanent access to the existing or proposed school sites.”

- Residents and Greenway Terrace do not anticipate a redevelopment of their lots in the future and are therefore making a permanent berm request on the north side of 69<sup>th</sup>. They argue that L-2 landscaping requirement shows that it will provide no noise-reducing or cut-through barrier to the site. The layout of the school district site shows clearly that there will be extensive bus, car, and student related traffic during at least two major peak periods and throughout the day. As compromise Greenway Terrace and the Residents propose the following:

“Landscaping shall be provided on the northerly boundary of the school district property and north of the proposed half-street roadway improvement. Applicant shall provide a 6-foot fence along the entire length of the northerly boundary of the property. If the owner of the Greenway

property to the north of the new school site provides a 20-foot wide temporary construction easement (for a period of 2 years) to the applicant within 30 days after a request from the applicant, then from the point where the proposed 69th street access touches the northerly boundary of the school district boundary to a point which is 100 feet to the east of the most easterly vehicular access for the half-street into the new school district site, the applicant will place a 5-foot berm topped with a northerly boundary fence and covered with landscaping to an L-5 standard, all located on such construction easement. The school district shall have no duty to maintain the landscaping, or to remove the berm, should the northerly half of the road be built. The construction easement shall be for the length of the berm, shall be for a period of two years, and shall expire at that time, leaving the berm in place. If the landowner to the north fails to provide the necessary construction easement to the applicant within the time specified and the applicant so notifies the County, then the applicant shall still be obligated to install the fence along the northerly boundary, but the landscaping shall be to an L-2 level along such northerly boundary of the applicant's property."

- The School District's submission that they have addressed the Greenway concern over children's crossing during construction, but request the following condition to implement that concern:

"To ensure the safety of children residing in the mobile home park to the north of the property and attending the existing elementary school during the construction of the new replacement school, the applicant's contractor shall post signage at a crossing area designating the location for crossing by all students from the mobile home park. There will be no construction traffic allowed to access this crossing area during those times when students will be going to school in the morning and returning home from school in the afternoon. In addition, the applicant will have a crossing guard at this location during these two times to assure that students cross safely."
- SEPA Appeal. Staff is under the mistaken impression that its determination is the County's. Where the Hearings Examiner is involved or the County Commissioners are involved, this is not the case. RCW 43.21C.240 does not stand for the proposition that staff's determination is final. There has been no

showing that the impact on the Residents is fully mitigated by an L-2 standard. There is no specification in the County's Code stating that an L-2 standard is a sufficient barrier to traffic cut-through, or noise from schools and residents. This issue can be solved by mitigation and Greenway Terrace and the Residents have provided a solution that will mitigate the concern.

Again, the citation to WAC 197-11-158 does not stand for the proposition the County Planner seeks to place into it. Further, the change in the roadway location has had no environmental analysis, let alone no analysis by the Washington Department of Transportation. Again, the mitigation conditions proposed by Greenway Terrace and the Residents, namely, the berm and the Washington Department of Transportation review would mitigate these concerns. Otherwise, the impacts are significant, are not mitigated, and could be mitigated.

Likewise, the citation by the County Planner of WAC 197-11-660 does not support what appears to be the County position. Specifically, that rule states "[a]ny governmental action \* \* \* may be conditioned \* \* \* to mitigate \* \* \*." The specific environmental impacts were addressed in the original appeal. Without the two conditions above, these impacts are not properly addressed.

**Exhibit 31** - Memoranda from Mr. Schulte and Mr. Knox dated November 12, 2004. Mr. Schulte on behalf of the concurrency staff makes the following additional comments:

- Comment #1 – Staff can support the proposed access connection to SR-503 at about the 6900 block, instead of the connection to the 71st Street cul-de-sac. However, this "eastside" connection must be approved by the state Department of Transportation (WSDOT). The applicant should be responsible for completing all of the roadway improvements required to make the connection and all related features. Note that related features could include special curbing and raised channelization on SR-503, illumination, and possibly other features. In addition, the applicant should comply with all WSDOT traffic control requirements.
- Comment #2 – In the event the proposed direct connection to SR-503 is not approved by WSDOT, the application should be denied based on a lack of roadway cross-circulation.
- Comment #3 – The proposed eastside connection to SR-503 should be considered a "temporary" measure. The permanent connection should be onto NE 71st Street, in order to provide direct access to the traffic signal at the NE 71st Street/SR-503 intersections. The applicant should be required to provide for this connection in the future when either the property to the north develops or easements can be obtained from the northern property owner(s). At such

- time as the permanent connection is made to NE 71st Street, the County retains the right to eliminate the “temporary” access to SR-503. The applicant should be responsible for all costs associated with connecting to the NE 71st Street roadway and eliminating the temporary connection to SR-503.
- Comment #4 – In order to facilitate the later connection to NE 71st Street and the elimination of the temporary connection to SR-503, any approval of the subject application should establish a post-decision review process as the permitting effort required to undertake the later work.
  - Comment #5 – The applicant should be required to obtain a traffic control permit from Clark County Public Works/Transportation during the interim period when the SR-503 connection will not be available and all traffic will need to be routed to the west. This permit will define special traffic control provisions that will be required during this interim period. The length of the interim period should be limited to 3 months, unless directed otherwise by the County Engineer.
  - Comment #6 – Following the interim period, the School District should be required to implement programs to encourage all school related traffic to use the eastside connection rather than the westside connection through the residential neighborhood. School busses should be required to access the school via the SR-503 connection only and should be prohibited from using the westside connection, unless directed otherwise by the County Engineer.
  - Comment #7 – Exhibit 29 (Charbonneau traffic analysis addendum) properly reflects the traffic impacts of the proposed development and the addition of NE 69th Street. In addition, staff has reviewed their concurrency finding for the development and their off-site safety assessment for the proposed development. Based on these additional reviews, staff finds that the development does fully comply with the County’s Concurrency ordinance and County safety standards.

Mr. Knox makes the following comments on behalf of the Engineering Staff.

- The revised temporary access easement located entirely on school property eliminates most of the issues raised by the SEPA appeal.
- Circulation - The revised plan adequately addresses the need for public cross circulation in the vicinity of the site and will allow subsequent development in the area to meet the standards of CCC 40.350.030(B)(2). The permanent solution to the general circulation needs in the vicinity will not be addressed until the surrounding properties are developed their highest and best use.

- **Access-** The revised plan will require the approval of the Washington Department of Transportation (WSDOT) for the proposed connection to SR 503 (NE 117th Avenue). Upon redevelopment of the surrounding properties, the temporary access shall be replaced with a permanent road which provides a connection to the signalized intersection at NE 71st Street. Staff finds it difficult to agree that allowing the passage of construction equipment across the TMT property will result in damage to the underground utilities serving the Greenway Terrace Mobile Home Park, but views the allowable uses of the land encumbered by the existing non-exclusive utility easement as primarily a legal, rather than a construction, issue.
- **Temporary Access Design Standards -** Staff finds that the applicant has provided a plan which demonstrates that the proposed access can feasibly accommodate bus traffic in the access route and has made provision for safe pedestrian access. Final determination of the adequacy of the geometric design of the access shall be made with the review and approval of the final construction plans. As required by Condition A-3 of the original engineering staff report, adequate sight distance shall be provided for all proposed intersections and driveways.
- **The Comprehensive Plan change and zone change request** dated submitted for Tom Moyer Theaters (TMT) and Evergreen School District dated July 20, 2004 (submitted with Exhibit 30) are cited as evidence of the strong likelihood of redevelopment of the vicinity in the near future, and thus support for the characterization of the school access off SR 503 as a temporary access. Staff also opines that, given the land values and the recent and imminent development in the area, it is entirely foreseeable that the property currently used as a mobile home park will soon be redeveloped for its highest and best use.
- **Urban Neighborhood Traffic Management -** The applicant has volunteered to provide appropriate traffic calming devices on the partial-width road along the site's northern property line. The Clark County Public Works Department shall evaluate the need for, and adequacy of, any such measures with the review and approval of the final construction plans.

**Exhibit 32 - Letter from WSDOT:** On November 18, 2004 H. Michael Clark, Regional Planning Manager for WSDOT wrote that WSDOT will permit the extension of NE 69<sup>th</sup> Street to access SR 503, provided that the access connection will be right in/right out. WSDOT will also require removal of the southern parking lot access as part of the NE 69<sup>th</sup> Street access construction. The applicant will be required to install a center median curb on SR 503 to prohibit left turns in and out of 69<sup>th</sup> Street and the curb must extend from the southern property line to 71<sup>st</sup> Street. This would also require additional lighting along the center median. This access will be temporary until the 71<sup>st</sup> Street access becomes available. If access from the school property to NE

71<sup>st</sup> Street is obtained prior to construction of NE69<sup>th</sup> Street then WSDOT will not permit the temporary access from 69<sup>th</sup> Street.

**Exhibit 33** - A November 19, 2004 letter from Vaughn Lein, the applicant's representative was the final rebuttal and closing statement.

- 1 / 4) Mr. Lein acknowledged that the school district is working with WSDOT on a temporary access permit at NE 69<sup>th</sup> Street and that the district understands that "when the final plans are developed for adjacent property north of the existing Orchards Schools owned by TMT properties" a final access to NE 71<sup>st</sup> Street will have to be developed. The proposed land use change for that property will be decided sometime next year as part of annual GMA review.

On the issue raised by the opponents that the temporary access has no environmental analysis, Mr. Lein argues that this location (69<sup>th</sup>) is currently paved and has no environmental restraints such as wetlands. The projection for new trips is at 400 per day at this location, including any cut through traffic.

- 2) The applicant has obtained a temporary construction access from NE 71<sup>st</sup> cul-de-sac by TMT which allows a legal connection for construction purposes. For Greenway Terrace concerns, the applicant will require the general contractor to locate all utilities and to repair them immediately should they become damaged.
- 3) Addressing Greenway's request for a berm and landscaping on top of it on the north side of the right-of-way, the applicant first argues absence of legal authority to provide a temporary berm (until Greenway Terrace redevelops). The district then argues that L2 is the standard landscape buffer for all schools throughout Clark County where residential uses occur across the street from school. This Examiner's recent decision in approving Covington Middle School is cited as an example. There is also a three foot high fence which should be adequate to maintain the elementary students on site. The south side sidewalk on 69<sup>th</sup> Street should keep the children walking away from Greenway Terrace. The district then suggests that the only people who may want to cut-through to Greenway are Greenway residents. The argument concludes that the traffic noise on new 69<sup>th</sup> Street will create more noise than the elementary school kids will and the district is not responsible for mitigating that noise.
- 5) The Evergreen School District has already committed to the posting of the crossing area and providing crossing guards at the temporary access road for construction.
- 6) Although the appellants Greenway Terrace holds a nonexclusive underground utility easement which is crossed by the temporary construction easement, TMT can grant a temporary construction easement so long as it does not

interfere with the Appellant's easement rights. Any dispute over that issue is really between the Appellants and TMT. The Appellants have failed to identify how the temporary construction easement will infringe on their utility easement.

The District does not propose to construct any new roads that may have an impact on underground utilities, nor does it propose to engage in any other activities that would interfere with appellant's utility easement. In fact, the temporary access easement granted to the District by Tom Moyer Theatres limits the scope of the District's use rights to "temporary ingress and egress", with no provisions permitting any construction or improvements to be made on the easement area. See Exhibit #24 to the SEPA appeal record.

- 7) Finally on the SEPA appeal the District disagrees with the Appellant's claim that the County must impose additional conditions of approval on appeal of a SEPA determination and in any event Appellants fail to present any basis that a clear error was made in this matter. The County's decision that existing code provisions could adequately address environmental impacts should be upheld. (See SEPA findings below for a fuller discussion of legal authority issues.)

### **FINDINGS**

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The issues discussed below were either raised by the applicant, addressed by staff in its report, or by agency comments on the application, and the Examiner adopts the following findings with regard to each.

The issues raised at the hearing and during the open record period, including SEPA appeal issues, will be addressed in the relevant findings.

#### **LAND USE - Zoning:**

##### **Finding 1**

The subject site is zoned primarily R-18 with the western quarter being zoned R1-6. These multi-family and single family zoning designations permit public or private schools including preschools, conditionally, upon the approval of a conditional use permit (CUP) and site plan review.

#### **Conditional Use Permit Review Standards**

##### **Finding 2**

CCC 40.520.030 establishes the general guidelines for CUP review and approval. CCC 40.520.030 (E) (1) authorizes the hearings examiner to impose other conditions found necessary to protect the best interest of the surrounding property or

neighborhood. The examiner can establish conditions that may include but are not limited to:

- a. Increasing the required lot size or setback dimensions;
- b. Increasing street widths;
- c. Controlling the location and number of vehicular access points to the property;
- d. Increasing the number of off-street parking or loading spaces required;
- e. Limiting the number of signs;
- f. Limiting the lot coverage or height of buildings because of obstructions to view and Reduction of light and air to adjacent property;
- g. Limiting or prohibiting openings in sides of buildings or structures or requiring screening and landscaping where necessary to reduce noise and glare and maintain the property in a character in keeping with the surrounding area; and,
- h. Establishing requirements under which any future enlargement or alteration of the use shall be reviewed by the county and new conditions imposed.

As established in these findings, the establishment, maintenance or operation of the replacement and enlarged elementary school adjacent to the old school location will not, under the circumstances of this particular case, be significantly detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of the school or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the county. [See CCC 40.520.030 (E) (1) (2), Actions by the Hearings Examiner]

There are appears to be an argument between the planning staff and the applicant and the SEPA appellants whether the Examiner has authority under SEPA to impose additional conditions as a result of the review conducted by the Examiner as a result of the SEPA appeal. On the issues relating to controlling access location and extent, the level of landscaping to screen out noise or setbacks for the same purpose, street widths, and conditions for approval of future modifications the Examiner has that authority under CUP, rendering the SEPA argument somewhat moot. The substantive issues raised by the applicant in their SEPA appeal will be addressed below under relevant findings relating to specific Development Code sections. Any remaining unresolved issues or portions thereof will be discussed under SEPA findings.

### **Finding 3**

The school district intends to demolish an approximately 11,000 SF portion of the existing school building of approximately 38,000 square feet. The demolished space will be needed to create access to the new school building of approximately 61,650 square feet located on a separate but adjacent parcel owned by the school district and located west of the existing facilities. The new school building is approximately 23,650 square feet (62.24 percent) larger than the existing school building, but is intended to serve between only 50 to 60 more students (from 593 to 650) . The new site plan identifies two locations for possible placement of modular classrooms of approximately 8,000 square feet if, and when needed. The applicant also proposes to

place a 4,000 square foot modular structure that will serve as a Family Resource Center. When completed, the total floor area of the new school (including the proposed modular structures) will be 69,650 square feet, and the remaining portion on a separate lot and without as yet any specified use will be approximately 27,000 SF after the demolition.

Furthermore, the applicant is increasing the number of off-street parking spaces to 147 stalls. When considered together, the proposed increase to the school building and the number of off-street parking stalls exceeds 25 percent minimum of the existing structures on the school premises; therefore, the applicant requires a new conditional use permit per CCC 40.520.040 (G) for the proposed new school building. The parking requirements for the surviving building will be determined when the use of that building and property is established.

In addition to CUP requirements, the applicant has also submitted an application for a site plan review to be reviewed in conjunction with the CUP application. The applicant has made adequate provisions to comply with the applicable sections of the code as discussed in findings and conclusions in this decision. This finding does not require a condition of approval.

**Site Plan Review Standards:**  
**Landscaping and Screening**  
**Finding 4**

CCC 40.320.010 (Landscaping and screening on private property) requires perimeter landscaping and screening between adjoining properties and uses. This is an on-site requirement and does not authorize off-site landscaping as requested by the SEPA appellants. The degree and height of the required screening is based on the zoning of the project site and the zoning of the neighboring properties. In addition, CCC 40.520.030 (E) (g) (Conditional Use) stipulates that the Hearings Examiner may require screening and landscaping where necessary to reduce noise and glare and maintain the property in a character in keeping with the surrounding area. Nothing in that provision authorizes the Examiner to authorize or permit any work on a property not subject to his immediate jurisdiction.

Landscaping is required along the front and sides of all buildings. The minimum requirements are landscaping trees, of a suitable species [per 40.320.010 (B) (1) (a) (b)]. The irrigation plan L1.1 and L1.2 and landscape plan L2.0, which describe the proposed irrigation and landscaping along the front and sides of the school building when implemented as proposed, would comply with the applicable code sections. No condition of approval is necessary. (See the proposed the Irrigation Plan, Sheet L1.1 and Sheet L1.2; and the proposed Landscape Plan, Sheet L2.0 for details).

**Perimeter Landscaping**  
**Finding 5**

The only landscaping in controversy is the north side perimeter landscaping. In addition to the landscaping in the right-of-way, there is also perimeter landscaping buffer. Although the County never makes an express finding it would appear that the one could be inferred from Condition D-2 which is attributed to Staff Land Use Finding 14, that the County believes that there is some noise from the school activities which would be adequately mitigated by L3<sup>2</sup> landscaping. The Staff finding is phrased as a condition requiring the School district to “ensure that noise, other than normal noise associated with operation of an elementary school, does not become a problem for the elderly citizens residing at Greenway ....” There is no attempt to define or anticipate or establish what “abnormal” noise is anticipated. The Staff condition associated with this finding requires adequate screening and references L3 standard as an example, to limit “the amount of noise perceived from the school by the elderly citizens. . .” The Examiner assumes that the concern for citizens over mere residents is without legal significance. The Staff does not establish that there will be noise that has to be screened. It is merely “perceived” and atypical noise that is being addressed in deference to the neighbors’ perceptions.

The SEPA appellants are asking that their perceptions of anticipated, but not established, noise levels from elementary school across 69<sup>th</sup> Street be addressed. The appellants apparently believe that it is sufficient to establish a concern about unquantified level or duration of unproven noise from elementary school children to require the applicant to build a five foot berm off-site and put landscaping on top of that.

We note that the play area is set another 30 to 40 feet from the street behind an internal path. The appellants believe that nothing else other than a five foot high berm (compromised from initial request of six feet) with landscaping and fencing on top of it, or L5 landscaping<sup>3</sup> would be adequate to protect from the impacts of elementary

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<sup>2</sup> L3, High Screen.

- a. Intent. The L3 standard provides physical and visual separation between uses or development principally using screening. It is used where such separation is warranted by a proposed development, notwithstanding loss of direct views.
- b. Required Materials. The L3 standard requires enough high shrubs to form a screen six (6) feet high and ninety-five percent (95%) opaque year around. In addition, one tree is required per thirty (30) lineal feet of landscaped area or as appropriate to provide a tree canopy over the landscaped area. Groundcover plants must fully cover the remainder of the landscaped area. A six (6) foot high wall or fence that complies with an F1 or F2 standard (Figure 40.320.010-6 and Figure 40.320.010-7) with or without a berm may be substituted for shrubs, but the trees and groundcover plants are still required. When applied along street lot lines, the screen or wall is to be placed along the interior side of the landscaped area. See Figure 40.320.010-3.

<sup>3</sup> L5, High Berm.

- a. Intent. The L5 standard can be used instead of the L4 standard where extensive screening is warranted and more space is available for separation between uses.
- b. Required Materials. The L5 standard requires a berm four (4) to six (6) feet high. If the berm is less than six (6) feet high, low shrubs that comply with the L2 standard

school children in a school environment. Like the staff, the SEPA appellants seem to anticipate perceived noise. There is nothing to suggest that the presence of elementary school children creates a legal obligation across a street and a setback triggers some additional legal obligation to the existing neighbors. The appellants do not offer other examples of berming as a best practice, the usual practice or even occasional practice within this jurisdiction; thus they seek to establish a new standard.

The applicant is saying that everyone is overreacting and that standard practice throughout the County for landscaped buffer for schools, let alone elementary schools, when separated by a street, is L2<sup>4</sup>. While fully aware of the applicant's argument which was first raised at the hearing, during the open record period, no one produced any evidence that there is anywhere in Clark County or Vancouver any other landscape buffer other than L2 where a street separates an elementary school from other uses. In fact no evidence has been adduced that this is the preferred practice or best practice for elementary schools anywhere in the greater Vancouver-Portland Metropolitan area. There is no evidence adduced that elementary school children or their cheering parents, friends or siblings would produce frequency, level or quality of noise that could only be endured at 40 or 50 feet remove, based on actual placement of play areas, behind a five foot high berm with a fence on top.

Given this posture of the participants, the first question is what kind of landscaped buffer might be actually required under the Development Code south of the right of way on NE 69<sup>th</sup> Street. While the Staff Report makes references to Table 40.320.010-1, and CCC 40.520.030 (E), where the latter merely grants the Examiner authority to exceed the Table standards, it never justifies its choices in terms of any findings. While the zoning where the proposed school is to be located is predominantly R-18 with an R1-6 quarter on the west end, the Comprehensive Plan designation is public facility. The Table 40.320.010-1 is not a model of clarity for this particular application.

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must be planted on top of the berm so that the overall screen height is six (6) feet. In addition, one (1) tree is required per thirty (30) lineal feet of berm or as appropriate to provide a tree canopy over the landscaped area. Groundcover plants must fully cover the remainder of the landscaped area. See Figure 40.320.010-5.

<sup>4</sup> L2, Low Screen.

- a. Intent. The L2 standard uses a combination of distance and low-level screening to separate uses or development. The standard is applied where a low level of screening sufficiently reduces the impact of a use or development, or where visibility between areas is more important than a greater visual screen.
- b. Required Materials. The L2 standard requires enough low shrubs to form a continuous screen three (3) feet high and ninety-five percent (95%) opaque year around. In addition, one (1) tree is required per thirty (30) lineal feet of landscaped area or as appropriate to provide a tree canopy over the landscaped area. Groundcover plants must fully cover the remainder of the landscaped area. A three (3) foot high masonry wall or fence at an F2 standard or a berm may be substituted for shrubs, but the trees and groundcover plants are still required. When applied along street lot lines, the screen or wall is to be placed along the interior side of the landscaped area. See Table 40.320.010-2.

Applying the table based on zoning designation for the area where school is located in R1-6 given the R1-6 zoning designation where the mobile home park is, separated by a street, we don't have any required landscape standards. At the R-18 side of the site L2 and a 10-foot buffer is required. If we argue, based on the comprehensive plan designation, that an elementary school campus is more like a campus or university (our only other choice in the table) we get L2 landscape with a 5-foot buffer.

Given that the prevailing community standard for landscape and buffering where an elementary school is across the street from a residential use is L2 with a 10-foot buffer and given that the applicant has expressed a willingness to provide this level of landscaping and buffering all along 69<sup>th</sup> Street, I find under my authority under CCC 40.520.030 (E) that this an appropriate level of perimeter landscaping and buffering on the north, except for a segment designated for school bus turnaround and discharge area. In doing so I am balancing the perceptions of the residents across the street and providing some additional buffering and some containment of the students within school grounds without sacrificing the safety concerns expressed by the applicant to be able to see what is going on the school grounds from the street. L2 provides for a 3 foot high fence or a shrub screen which should be sufficient to contain most elementary school children and provide the visibility that is important for children's safety.

I do note that there was perception of noise which I found credible from buses waiting to pick up and from busses waiting to leave. For the area between 69<sup>th</sup> Street and the bus turnaround/pick up and discharge area I find that L3 landscaping with a solid fence or a fence berm combination to provide a six foot high screen should be adequate; however, since better landscape continuity might be provided with a three foot high berm with L2 screen or fence that would be a permitted option.

- a. On the north, the required perimeter landscaping schemes are L2 within a 10-foot buffer on eastern section bordering R-18 zone and L2 within a 10 foot buffer along the western section bordering R1-6 zone, except that L3 scheme or a combination of a three foot high berm and L2 screen is required north of the bus discharge and waiting area.
- b. On the east, the required landscaping scheme is L3 within a 10-foot buffer bordering R-18 zone.
- c. On the south, the required landscaping scheme is L3 within a 20-foot buffer on the section bordering ML zone and L3 within a 10 foot buffer on the section bordering R-7.5 zone.
- d. On the west, the required landscaping is L3 within a 10-foot buffer.<sup>6</sup> (See conditions of approval C-1)

**Frontage Landscaping**  
**Finding 6**

If applicable in addition to condition C-1s (Finding 5) the applicant may be required to provide additional appropriate landscaping along the site's frontage on NE 69th Street per CCC 40.320.020 (H) (G). (See condition of approval C-2)

### **Off Street Parking**

#### **Finding 7**

The applicant indicates that the current school enrollment is 593 students. When the redevelopment project is completed, the new school will enroll 650 students plus 63 staff. The applicant is providing 147 off-street parking spaces. Table 40.340.010-4 (D) (4)] requires 1 space / 4 seats, or 8 feet of bench length in auditorium or assembly room, whichever is greater. The off-street parking needs of the staff are factored into the standard. The proposed elementary school does not propose an auditorium but incorporates a commons area with a capacity for 461 persons. Based upon the specific code requirements, the applicant has provided adequate off-street parking for the school because:

- Elementary school students may not own or drive vehicles;
- Many of them may be bused to and from school; and,
- Some parents will drive their children to school in the morning or pick them up after school.

With these elementary school characteristics, the applicant has provided adequate off-street parking for the school needs. This standard is met, therefore; no condition of approval is necessary with this finding.

#### **Finding 8**

Per CCC 40.340.010 ((B) (5), at a minimum, thirty (30) percent of the parking spaces provided should be designed for compact vehicles consistent with the standards shown in Table 40.340.010-5. (See condition of approval A-1)

### **Handicapped Parking**

#### **Finding 9**

The applicant has designated 8 off-street parking spaces for the physically challenged [per CCC 40.340.010 (B) (6), WAC 51-30-1103, Table No. 11-F]. The proposed site plan also shows striped wheel chair access to the school building. This standard is satisfied; therefore, no condition of approval is necessary.

### **Loading and unloading berth**

#### **Finding 10**

The proposed school building is 69,650 square feet. Therefore, per CCC 40.340.010 (D) (2), the applicant shall provide one (1) loading and off-loading berth, per Table 40.340.010-2. (See condition of approval A-2)

**Solid Waste Disposal**

**Finding 11**

The applicant has shown the solid waste disposal enclosure [per CCC 40.360.020 (B)]. This requirement is satisfied; therefore, no additional condition of approval is necessary.

**Pedestrian and Bicycle Circulation**

**Finding 12**

Though not mandatory per code, the applicant should consider providing bicycle racks with spaces for a minimum of ten (10) bicycles consistent with CCC 40.350.010 (D). (See condition of approval A-3)

The applicant has provided travel paths for pedestrians by providing side walks leading to the school building from NE 69th Street and by providing pedestrian crosswalks, where appropriate, on the parking lot. The site plan also shows a meandering continuous trail round the school premises and terminating at the covered outdoors play area. These features will provide an aesthetic ambiance and an opportunity for recreational activities to students and neighborhood residents alike.

**Light and Glare**

**Finding 13**

The applicant needs to ensure that proposed outdoors lights are shielded downward, and do not cast glare onto neighboring properties in the area. During evening sporting events, all activities should end by 9:30 p.m., and outdoor lights, except for security lighting, must be out by 10:00 p.m. (See condition of approval D-1)

**Noise Impacts**

**Finding 14**

Per CCC 40.520.030 (E) (1) (g) requires that findings be made limiting or prohibiting openings in sides of buildings or structures or requiring screening and landscaping where necessary to reduce noise and glare and maintain the property in a character in keeping with the surrounding area. This noise issue has been discussed extensively in Finding 5 and the Examiner's authority under these provisions is addressed in the choice of landscaping on the south side of NE 69<sup>th</sup> Street. That finding established that landscape buffering sufficient to ensure that noise associated with operation of an elementary school, especially the noise created by the applicant's choice of putting the school bus discharge and pick up area across the street from a residential area does not become a problem for the elderly citizens residing at Greenway Terrace Mobile Home Park. (See condition of approval C-1)

**Modular Structures**

**Finding 15**

The applicant has proposed two modular structures on these premises: one is 4,000 square foot modular that will serve as a Family Resource and the second, is a 4,000 square foot modular that will serve as a classroom. Both structures, totaling 8,000

square feet will be placed on the school premises, when needed. Prior to final site plan recording, the applicant may wish to identify additional potential modular spaces.

### **Children's Safety**

#### **Finding 16**

The Examiner finds credible the testimony expressing concern over safety of children's crossing to the existing school from Greenway Terrace during the construction phase of this project. The school district has acknowledged this concern. To ensure the safety of children residing to the north of the school site and attending the existing elementary school during the construction of the new replacement school, the applicant's contractor shall post signage at a crossing area designating the location for crossing by all students from the mobile home park. There will be no construction traffic allowed to access this crossing area during those times when students will be going to school in the morning and returning home from school in the afternoon. In addition, the applicant will have a crossing guard at this location during these two times to assure that students cross safely. (See Condition of Approval D- 5)

### **Special set back standards for schools**

#### **Finding 16**

All proposed buildings including the placement of modular structures shall be setback, at a minimum, 30 feet from the side and rear lot line. There shall be no evidence of incidental commercial activities taking place within the building per CCC 40.260.070. (See condition of approval D-3)

### **SIGNS**

#### **Finding 1**

Any new sign proposed to advertise this development must comply with the applicable sections of CCC 40.310. (See condition of approval C-3)

### **CRITICAL AREAS:**

#### **Finding 1 Critical Aquifer Recharge Areas**

Based on the County GIS, the property is located within a critical aquifer recharge area (CARA), Category II. In accordance with CCC 40.410.020, a CARA permit is required for proposed uses of the site which have the potential to adversely impact the aquifer.

The applicant has provided a statement that proposed school activities are not among those activities prohibited or requiring a permit under the provisions of CCC 40.410.020.

Based upon the development site characteristics and the information provided by the applicant, the Best Management Practices required by the County's stormwater

ordinance will adequately mitigate potential impacts to groundwater and that the proposed development plan is feasible. Therefore, the requirements of the preliminary plan review criteria are satisfied.

**TRANSPORTATION CONCURRENCY:**

The applicant's corrected traffic study - See Exhibit 29 (Charbonneau) which, at least for the time being, has removed the problems associated with NE 71<sup>st</sup> cul-de-sac by using the new extended 69<sup>th</sup> Street connection, has estimated the total net new total weekday AM peak hour trip generation at 327 new trips, mid-afternoon peak hour at 218 trips, and PM peak hour trip generation is estimated at 70 trips. The following paragraphs document two transportation issues for the proposed development. As shown in the Staff Report new trips caused by the larger school are calculated at from 53 for the AM peak to 11 for the PM peak. Because 69<sup>th</sup> will now connect to SR 503 at the location of the current school driveway, the traffic pattern for the new school facility should remain substantially the same (see Traffic Study). The applicants argue persuasively that with a posting of 25mph on the extended 69<sup>th</sup>, speed bumps and traffic calming, school signage and turning movements required west of the school the cut through traffic on 69<sup>th</sup> west of SR 503 should be negligible (Exhibit 29, Charbonneau).

**Issue #1: Concurrency**

The applicant submitted a traffic study for this proposal in accordance with CCC 40.350.020B and is required to meet the standards established in CCC 41.350.020G for corridors and intersections of regional significance. The County's Traffix<sup>TM</sup> model includes the intersections of regional significance in the area and the County's model was used to evaluate concurrency compliance.

**Site Access**

**Finding 1:**

Level of Service (LOS) standards is not applicable to accesses that are not regionally significant; however, the LOS analysis provides information on the potential congestion and safety problems that may occur at the site access to the arterial and collector network. The applicant has submitted a revised plan (Exhibit 29) which will obtain approval of WSDOT (Exhibit 32) for the proposed connection to SR 503 (NE 117th Avenue). Upon redevelopment of the surrounding properties, the temporary access shall be replaced with a permanent road which provides a connection to the signalized intersection at NE 71st Street (see Exhibit 32 and 31)

The applicant should be responsible for completing all of the roadway improvements required to make the connection and all related features. Note that related features will include special curbing and raised channelization on SR-503, illumination, and possibly other features. In addition, the applicant should comply with all WSDOT traffic control requirements.

The proposed eastside connection to SR-503 is considered a “temporary” measure. As already noted, the permanent connection should be onto NE 71st Street, in order to provide direct access to the traffic signal at the NE 71st Street/SR-503 intersection. The applicant should be required to provide for this connection in the future when either the property to the north develops or easements can be obtained from the northern property owner(s). At such time as the permanent connection is made to NE 71st Street, the County retains the right to eliminate the “temporary” access to SR-503. The applicant should be responsible for all costs associated with eliminating the temporary connection to SR-503 upon the ultimate connection to NE 71<sup>st</sup> Street.

In order to facilitate the later connection to NE 71st Street and the elimination of the temporary connection to SR-503, any approval of the subject application should establish a post-decision review process as the permitting effort required to undertake the later work (See condition D -6)

Following the interim period, the School District should be required to implement programs to encourage all school related traffic to use the eastside connection rather than the westside connection through the residential neighborhood. School busses should be required to access the school via the SR-503 connection only and should be prohibited from using the westside connection, unless directed otherwise by the County Engineer.

### **Operating LOS on Corridors**

#### **Finding 2:**

The proposed development was subject to concurrency modeling. The modeling results indicate that the operating levels comply with travel speed and delay standards. The applicant should reimburse the County for costs incurred in running the concurrency model. (See condition A-4)

### **Concurrency Compliance**

Exhibit 29 (Charbonneau) properly reflects the traffic impacts of the proposed development and the addition of NE 69th Street. In addition, staff has reviewed their concurrency finding for the development and their off-site safety assessment for the proposed development. Based on these additional reviews, staff finds that the development does fully comply with the County’s Concurrency ordinance and County safety standards (Concurrency Ordinance CCC 40.350.020). There is no evidence to the contrary. (Exhibit 31)

### **Issue 2: Safety**

Where applicable, a traffic study shall address the following safety issues:

- Traffic signal warrant analysis,
  - Turn lane warrant analysis,
  - accident analysis, and
- Any other issues associated with highway safety.

Mitigation for off-site safety deficiencies may only be a condition of approval on development in accordance with CCC 40.350.030.6a. This section states that:

“Nothing in this section shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Section 40.350.020 or a significant traffic or safety hazard would be caused or materially aggravated by the proposed development: provided that the developer may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020.”

### **Turn Lane Warrants**

#### **Finding 3:**

Turn lane warrants are evaluated at un-signalized intersections to determine if a separate left or right turn lane is needed on the uncontrolled roadway. The applicant's traffic study analyzed the roadways in the local vicinity of the site to determine if turn lane warrants are met. Turn lane warrants were not met at any of the un-signalized County intersections analyzed in the applicant's traffic study; therefore, mitigation is not required.

### **Historical Accident Situation**

#### **Finding 4:**

There was considerable testimony relating to the design issues with the 71<sup>st</sup> Street cul-de-sac. While the applicant did not study the issue of traffic conflicts in the cul-de-sac there was considerable anecdotal evidence of “near misses”. Because for the time being access to the new school through 71<sup>st</sup> is abandoned the overall issue becomes moot; however, the 71<sup>st</sup> will still be used temporarily for construction traffic for the school until other access is constructed. While children's safety is addressed separately, there is no evidence that construction traffic cannot exercise due care through 71<sup>st</sup>. When the design of 71<sup>st</sup> is reviewed as part of a permanent solution the design issues should be addressed during the post-decision review (See Condition D-6).

The applicant's traffic study analyzed the accident history at the regionally significant intersections; however, all of the historical accident rates at these intersections are below 1.0 accident per million entering vehicles. Therefore, mitigation by the applicant is not required.

### **Traffic Controls**

#### **Finding 5:**

The traffic study included drawings of the current traffic and pedestrian controls in the vicinity of the school. The existing conditions should be verified when submitted as part of the signing and striping plan. The school district will need to coordinate with the County and submit plans to modify the signing, striping and other traffic control to

accommodate the proposed development plan. The school signing will need to be modified for consistency with the language in WAC 468-95-330.

To comply with this requirement, the applicant shall submit a signing and striping plan and a work order, authorizing County Road Operations to perform the required work. The Department of Public Works must approve this work prior to final site plan approval. (See Condition A-5)

**Finding 6**

During site development activities, the public transportation system (roadways, sidewalks, bicycle lanes, etc.) may be temporarily impacted. In order to minimize these impacts and coordinate work occurring in the public right-of-way, the applicant will need to prepare and have approved a Traffic Control Plan. See Children's Safety Finding 16 (See condition B-1)

**TRANSPORTATION:**

**Finding 1 – Circulation Plan**

The plan submitted with the application provides for an east-west connection which is vitally needed in this area and will allow subsequent development in the area to meet the cross-circulation standards of CCC 40.350.030(B) (2). The applicant's plan greatly improves cross circulation in this area and provides for an efficient and safe road network.

The revised plan for access through 69<sup>th</sup> Street adequately addresses the need for public cross circulation in the vicinity of the site and will allow subsequent development in the area to meet the standards of CCC 40.350.030(B)(2). The permanent solution to the general circulation needs in the vicinity will not be addressed until the surrounding properties are developed their highest and best use.

**Finding 2 – Roads**

The applicant proposes to extend NE 69th Street with a full-width improvement through the northwest corner of the site and onto the northern property line, where a partial-width improvement will extend for most of length of the property to the site's northeast corner. NE 69th Street is classified as an urban neighborhood circulator road. The minimum improvements for this roadway in accordance with CCC Table 40.350.030-4 and the Standard Details Manual, Standard Drawing #13, include:

- A minimum right-of-way width of 54 feet
- A minimum roadway width of 36 feet
- Curb and gutter
- Minimum sidewalk width of 5 feet

Sidewalk is required on both sides of the full-width street section. The applicant proposes to locate a portion of the sidewalk outside of the public right –of-way. As shown on Standard Drawing #13, a sidewalk may be placed within an easement. The

applicant shall dedicate the required right-of-way and record a public easement for the sidewalk prior to Final Site Plan approval for the new school. See Condition A-6, C-5

### **Finding 3 – Access**

The applicant proposes a temporary access to connect the partial-width road at the northwest corner of the site to SR 503. WSDOT has approved the proposed temporary connection to SR 503 (NE 117th Avenue) with a right-in and right out access. WSDOT will also require removal of the southern parking lot access as part of the NE 69<sup>th</sup> Street access construction. The applicant will be required to install a center median curb on SR 503 to prohibit left turns in and out of 69<sup>th</sup> and the curb must extend from the southern property line to 71<sup>st</sup>. This would also require additional lighting along the center median. This access will be temporary until the 71<sup>st</sup> access becomes available. If access from the school property to NE 71<sup>st</sup> is obtained prior to construction of NE 69th then WSDOT will not permit the temporary access from 69<sup>th</sup>. (See Condition D-7)

### Temporary Access Design Standards

The applicant has provided a plan which demonstrates that the proposed access can feasibly accommodate bus traffic in the access route and has made provision for safe pedestrian access. Final determination of the adequacy of the geometric design of the access shall be made with the review and approval of the final construction plans. As required by Condition A-3 of the original engineering staff report, adequate sight distance shall be provided for all proposed intersections and driveways. (See Condition A-8)

The Comprehensive Plan change and zone change request dated submitted for Tom Moyer Theaters (TMT) and Evergreen School District dated July 20, 2004 (submitted with Exhibit 30) are cited as evidence of the strong likelihood of redevelopment of the vicinity in the near future, and thus support for the characterization of the school access off SR 503 as a temporary access. Staff also opines that, given the land values and the recent and imminent development in the area, it is entirely foreseeable that the property currently used as a mobile home park will soon be redeveloped for its highest and best use.

### Construction Access.

For construction purposes the applicant is proposing to use access from 71<sup>st</sup> cul-de-sac. The applicant has obtained a temporary access easement from TMT properties. The applicant does not propose to build any improvements for this access. The Greenway Terrace LLC apparently maintains that they have an exclusive easement for their utilities and that they will not permit the crossing from 71<sup>st</sup>. The applicant and TMT believe that the easement is non-exclusive and that the applicant can make the crossing and will identify where the utilities are connected and repair any damage. The applicant states that any dispute on this issue is a private matter between Tom Moyer Theaters and Greenway. While the Examiner notes that the reference to the easement, provided by the Greenway's attorney with Exhibit 24 refers to it as

nonexclusive, the Examiner remains agnostic on the meaning and significance of that. Prior to final Site Plan approval the applicant will have to establish to the satisfaction of the County that the applicant has the legal ability to proceed with construction. (See Condition A-7)

The District shall not construct any new roads that may have an impact on underground utilities, nor engage in any other activities that would interfere with appellant's utility easement. In fact, the temporary access easement granted to the District by Tom Moyer Theatres limits the scope of the District's use rights to "temporary ingress and egress", with no provisions permitting any construction or improvements to be made on the easement area. See Exhibit #24 to the SEPA appeal record. (Condition D-8)

If the construction access easement from 71<sup>st</sup> shall prove unfeasible, the applicant shall be required to obtain a traffic control permit from Clark County Public Works/Transportation during the interim period when the SR-503 connection will not be available and all traffic will need to be routed to the west. This permit will define special traffic control provisions that will be required during this interim period. The length of the interim period should be limited to 3 months, unless directed otherwise by the County Engineer. See Exhibit 31 attachment from Steve Schulte - and Condition D-8.

**Finding 4 – Sight Distance**

The approval criteria for sight distances are found in CCC 40.350.030(B) (8). This section establishes minimum sight distances at intersections and driveways. See Condition A-9

**Finding 5 – Bicycle / Pedestrian Circulation**

As discussed above, the applicant shall be required to install sidewalk on both sides of the full-width section of NE 69th Street. The temporary access road serving the site to the east includes an asphalt sidewalk on one side. Permanent pedestrian facilities will be completed with the future development of the adjoining properties.

All sidewalks, driveway aprons, and road intersections shall comply with the Americans with Disabilities Act.

**Finding 6 – Road Modifications**

There are no road modifications associated with this proposal.

**Finding 7 - Traffic Calming**

The applicant has volunteered to provide appropriate traffic calming devices on the partial-width road along the site's northern property line. The Clark County Public Works Department shall evaluate the need for, and adequacy of, any such measures with the review and approval of the final construction plans. See testimony on page 15 above and condition of approval A -9)

**Conclusions (Transportation)**

Based upon the development site characteristics, the proposed transportation plan, the requirements of the County's transportation ordinance, and the findings above, the proposed preliminary transportation plan, subject to Conditions of approval, meets the requirements of the county transportation ordinance.

**STORMWATER:**

**Finding 1 - Applicability:**

Stormwater and Erosion Control Ordinance CCC 40.380, adopted July 28, 2000 (amended July 30, 2002 and September 17, 2002), apply to development and/or redevelopment activities that result in 2,000 square feet or more of new impervious surface; and all land disturbing activities, except those exempted in Section 40.380.030.

The project will create more than 2,000 square feet of new impervious surface, and it is a land disturbing activity not exempted in Section 40.380.030. Therefore, this development shall comply with the Stormwater and Erosion Control Ordinance, 40.380.

The erosion control ordinance is intended to minimize the potential for erosion and a plan is required for all projects meeting the applicability criteria listed in 40.380.020. This project is subject to the erosion control ordinance.

**Finding 2 – Stormwater Proposal:**

The applicant proposes to manage onsite stormwater by collecting site runoff in inlets and convey the flows via storm sewer pipes to two biofiltration swales, and dispose of the treated runoff into a system of drywells, infiltration trenches, and an infiltration pond. Five additional infiltration facilities are proposed for disposal of roof areas and foundation footing drains for the proposed school building. The proposed stormwater management facilities are to be privately maintained by the Evergreen School District.

**Finding 3–Site Conditions and Stormwater Issues:**

The 1972 soil survey of Clark County published by USDA, SCS shows the site to be underlain by Sifton gravelly loam classified by AASHTO as A-2 soils for the depths of 0 to 16 inches below the ground surface (bgs) and A-1 soils for the depths of 16 to 60 inches bgs. Sifton soils are designated as hydrologic group "B". Stormwater and Erosion Control Ordinance, CCC 40.380, lists A-2- 4, A-2-5, A-1-a, and A-1-b soils as suitable for infiltration. The applicant has provided a soil report prepared by GeoDesign, Inc., dated September 29, 2003, which demonstrates soil suitability for infiltration. This report was prepared by a qualified geo-technical engineer and includes both approved field-testing and laboratory testing. The report provides infiltration test results at two locations, with measured infiltration rates in the gravel and cobble materials estimated to exceed 1,000 inches per hour. Sifton gravel soils have historically produced high infiltration rates, so these results appear reasonable.

In accordance with CCC 40.380.040(C) (3) (b), the applicant may be required to test a representative drywell after completion of the stormwater improvements to verify design infiltration rates. If required, the test results shall be submitted to the county by the project engineer prior to completing construction of the stormwater facilities. Redesign may be required if tested rates are less than those utilized in the design. See Condition C-6.

In accordance with the provisions of Section CCC 40.380.040(C) (3) (a), the proposed stormwater management facility is to be privately owned and maintained. In accordance with the requirements of CCC 40.380.040(H)(3)(b), the county may inspect privately maintained facilities for compliance with the requirements of the county stormwater and erosion control ordinance, and take code enforcement action if the facilities are not being properly operated or maintained. The applicant shall provide easements or a covenant acceptable to the county for purposes of inspection of privately maintained facilities. See Condition A-10.

In accordance with Section CCC 40.380.040(C) (1) (h), all lots in the urban area must be designed to provide positive drainage from the bottom of footings to an approved stormwater system. See Condition A-11.

The migration of fine grained soil materials into the proposed infiltration facilities can significantly decrease the ability of these facilities to perform as functioned. The applicant shall provide a clear explanation in the construction plans and stormwater report of the measures proposed to prevent contamination of the infiltration facilities by fine grained soil materials during construction. See Condition A-12

### **Conclusion (Stormwater)**

Based upon the development site characteristics, the proposed stormwater plan, the requirements of the County's stormwater ordinance, and findings above, staff concludes that the proposed preliminary stormwater plan, subject to conditions of approval is feasible. Therefore, the requirements of the preliminary plan review criteria are satisfied.

### **FIRE PROTECTION:**

#### **Fire Marshal Review**

#### **Fire Protection Finding 1**

This application was reviewed by Tom Scott in the Fire Marshal's Office. Tom can be reached at (360) 397-2375 x4095 or 3323. Information can be faxed to Tom at (360) 759-6063. Where there are difficulties in meeting these conditions or if additional information is required, contact Tom in the Fire Marshal's office immediately.

**Building Construction**

**Fire Protection Finding 2**

Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process (see condition of approval A-13).

**Fire Flow**

**Fire Protection Finding 3**

Fire flow in the amount of 1,688 gallons per minute supplied at 20 pounds per square inch (psi) for 2 hours duration is required for this application. A utility review from the water purveyor indicates that the required fire flow is available at the site. Additions to water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to final plat approval (see condition of approval A-14).

**Fire Hydrants**

**Fire Protection Finding 4**

Fire hydrants are required for this application. The applicant shall provide one additional fire hydrant to the existing hydrants on the premises. (See condition of approval C-4)

Fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. Provide and maintain a six-foot clear space completely around every fire hydrant (see condition of approval C-4)

**Fire Apparatus Access**

**Fire Protection Finding 5**

Fire apparatus access is required for this application. The roadways and maneuvering areas as indicated in the application shall meet the requirements of the Clark County Road Standard. The applicant shall provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface capable of supporting the imposed loads of fire apparatus (see condition of approval A-15).

**Fire Apparatus Turnarounds**

**Fire Protection Finding 6**

Approved fire apparatus turnarounds are required for this project. The provisions for turning around fire apparatus comply with the Clark County Road Standard (see condition of approval A-16)

**WATER & SEWER SERVICE:**

**Finding 1**

The City of Vancouver provides public water and Hazel Dell sewer services in the area. The utility reviews from the city confirm that these services are available to the site.

**Finding 2**

Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Final Approval Letter" must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy). The Health Department Evaluation Letter will serve as confirmation that the Health Department conducted an evaluation of the site to determine if existing wells or septic systems are on the site, and whether any structures on the site have been/are hooked up to water and/or sewer. The Health Department Final Approval Letter will confirm that all existing wells and/or septic systems have been abandoned, inspected and approved by the Health Department (if applicable). (See condition of approval E-2).

**Other Health Concerns**

**Finding 2**

The existing school building and storage facilities will be removed. All demolition wastes must be properly disposed consistent with county demolition permit requirements. The applicant shall provide proof of appropriate waste disposal in the form of receipts to the Health Department with requests for confirmation that the conditions for final site plan approval have been satisfied. (See condition of approval A-17)

**Finding 3**

If underground storage tanks exist on the property, they must be identified and decommissioned in place consistent with the Uniform Fire Code with permit from the Fire Marshal. Any leaks or contamination must be reported to Washington State Department of Ecology, and proof of removal or abandonment (of the tank) must be submitted to the Health Department prior to final site plan approval. (See condition of approval A-18)

**IMPACT FEES:**

**Finding 1**

The site is located in Park Impact Fee (PIF) District 6, Evergreen School District Impact Fee (SIF), and Orchards Traffic Impact Fee (TIF) district. Public schools are exempt from impact fees exaction; therefore, no impact fees will be imposed on this development.

**SEPA DETERMINATION**

**Determination of Non-Significance (DNS):** Clark County, as lead agency for review of this proposal, has determined that this proposal does not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030 (2) (e). This decision was made after review of a completed environmental checklist and other information on file with the County. The lead agency will not act on this proposal until the close of the 14-day

comment period, which ends on October 13, 2004. That was the day on which Greenway Terrace LLC filed their SEPA appeal raising four issues:

1. Transportation Cul-de-sac: The cul-de-sac at the West end of 71<sup>st</sup> which will provide the west side access to the school is now overused will become dysfunctional with addition of school traffic. It is also unsafe. No study has been done to determine a proper design, not identified in the SEPA checklist and no mitigation is proposed.

### **SEPA Appeal Finding 1**

With direct, although limited to right-in and right-out access and until the redevelopment of the northern parcels and creation of a safe solution to the current 71<sup>st</sup> cul-de-sac dilemma the immediate issue raised by the appeal goes away. It is clear the issue may arise another day, but it will be resolved within the totality of the new circumstances. There is nothing in the record to suggest that the totality of the future circumstances after the rezoning by TMT will not resolve the issue to the point that the engineering consensus will find the operation of 71<sup>st</sup> for the purposes of future school access as safe. The appellant's creative solutions offered by Brent Ahrend can be reviewed during consideration of the permanent access. The only remaining issue for the appellants is construction traffic which is clearly temporary. There is no evidence that this limited professional traffic will be unsafe. The applicant's and county's Engineers found the original proposal adequate and the evidence in this record supports the conclusion that construction traffic will function adequately.

2. Transportation - Safety and Efficiency: The 20-foot half street will be unsafe for two-way traffic involving school buses, no analysis of cut-through traffic using the new 69<sup>th</sup> (adding more pressure on the cul-de-sac). The issue is not addressed in the check list and not mitigated.

The applicant has agreed to post guards - See Children's Safety Finding 16. The applicants' request has been agreed to.

3. Noise: The project does not minimize noise impacts that will degrade housing livability from the proximity of the playground and access road to the residential units.

There is no evidence introduced to support that having an elementary school across the street, with landscaped buffering will produce levels of noise that will degrade livability. There is every reason to believe that livability will be enhanced with a new school and a new playing field. This is an elementary school and not a high school, the key use areas are situated in the middle of the site providing additional buffering. The noise activities, to the extent they exist are temporary and are confined via conditions of approval to reasonable hours.

As the applicant and the County Staff note, a school currently exists on an adjacent site and no change of use is proposed. The level of noise that currently exists on the

school premises will likely remain the same although moved further west. The State Department of Ecology has specifically exempted "sounds created by natural phenomena and unamplified voice" from the noise regulations applicable to the properties. See WAC 173-60-040 Maximum Permissible Environmental Noise Levels; WAC 173-60-050(k). Appellants have presented no evidence whatsoever to show that the County made a clear error in its determination regarding noise impacts. As Finding 5 indicates the County has in fact gone to extend of mitigating "perceived" impacts beyond the level required. The applicant has agreed to L2 10-foot landscaped along NE 69<sup>th</sup> which is in excess of what the relevant Table appears to require; however, the Examiner has required L3 landscaped buffer in the area where the school buses will discharge and pick up students.

4. Utilities: In order to construct a road connecting the west end of 71<sup>st</sup> with 69<sup>th</sup> the applicant will have to cross an unrestricted utility easement which provides water and sewer to the Greenway property and which are necessary to serve the 78 dwellings. Past construction has seriously degraded these utilities and the problem has not been identified or addressed by the County.

The applicant is not now proposing to construct any road across the easement that has been identified. As the applicant has indicated in exhibit 33 the applicant has obtained a temporary construction access from NE 71<sup>st</sup> cul-de-sac by TMT which allows a legal connection for construction purposes. For Greenway Terrace concerns, the applicant will require the general contractor to locate all utilities and to repair them immediately should they become damaged. This has been memorialized in a condition of approval.

Although the appellants have styled their appeal as a SEPA appeal, the issue raised by them could have been raised just as easily during the open hearing under the conditional use criteria.

According to the District, RCW 43.21 C.240 (3) prohibits the County from imposing additional mitigation during project review if the county adequately addresses a project's probable specific adverse environmental impacts. RCW 43.21C.240 and WAC 197-11-158 permit the County to issue a determination of non-significance ("DNS") if the County, in the course of project review, considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, Subarea plan element of the comprehensive plan, or other local, state or federal rules or laws and the county bases or conditions its approval on compliance with these requirements or mitigation measures. The County has expressly accepted the process set forth in WAC 197-11-158 in reviewing project proposals. See Clark County Dev' Code, Section 40.570.020(E).

Here, the County issued a DNS based on its analysis that the impacts of the project can be adequately addressed in applying the County's code. SEPA decisions made by the SEPA responsible official are entitled to substantial weight. RCW 43.21 C.090. Clark County Development Code Sections 40.570.080(0) (4) and 40.570.020(8) (2). Clear error is the standard of review applicable to substantive decisions under SEPA, including determinations of non-significance and conditions of development approval set forth therein. *Cougar Mt. Assocs. v. Kina County*, 111 Wn.2d 742, 747, 765 P.2d 264 (1988). The determination by the governmental agency is clearly erroneous only if the reviewing tribunal is left with "the definite and firm conviction that a mistake has been committed. *Id.* at 747 (quoting *Polygon Corp v. Seattle*, 90 Wn.2d 59, 69, 578 P.2d 1309(1978). Appellants fail to present any basis that a clear error was made in this matter.

The Examiner agrees with the Appellants that he has the authority based on open hearing evidence, as well as under the conditional use permitting process to adjust, change, add or subtract conditions of approval. The Examiner has done so here and believes that the Appellant's concerns have been addressed to the extent required or necessary under the applicable approval criteria,

## DECISION

Based upon the proposed plan (identified as Exhibit 5 and by Exhibit 29), and the findings and conclusions stated above, Hearings Examiner APPROVES this request, subject to the understanding that the applicant is required to adhere to all applicable codes and laws, and is subject to the following conditions of approval:

### Conditions of Approval

- A. Conditions that must be met prior to Final Site Plan approval; or if improvements are approved by the county for bonding or other secure method, such conditions shall be met prior to issuance of Occupancy Permits per CCC, Section 40.350.030(C)(4)(i) & (j).**

### Land Use

- A-1 Per CCC 40.340.010 ((B) (5), no more than thirty (30) percent of the off-street parking spaces provided shall be designed for compact vehicles per Table 40.340.010-5. (See Land Use Finding 8)
- A-2 Per CCC 40.340.010 (D) (2), the applicant shall provide one (1) loading and off-loading berth per Table 40.340.010-2. (See Land Use Finding 9)
- A-3 The applicant may consider providing bicycle racks with spaces for a minimum of ten (10) bicycles per CCC 40.350.010 (D). (See Land Use Finding 12)

**Concurrency:**

- A-4 The applicant shall reimburse the County for the cost of concurrency modeling incurred in determining the impact of the proposed development, in an amount not to exceed \$1,500. The reimbursement shall be made within 60 days of issuance of the Staff Report with evidence of payment presented to staff at Clark County Public Works. (See Transportation Concurrency Finding # 2)
- A-5 The applicant shall submit a signing and striping plan and a work order, authorizing County Road Operations to perform the required signing and striping within the County right-of-way including relocation crosswalks. This plan and work order shall be approved by the Department of Public Works Transportation prior to the issuance of building permits. (See Transportation Concurrency Finding #5)

**Transportation:**

- A-6 The applicant shall dedicate to the public right-of-way as required along NE 69<sup>th</sup> Street to the standards of an urban neighborhood circulator road in accordance with CCC Table 40.350.030-4 and the Standard Details Manual, Standard Drawing #3. The applicant shall record a public easement for that portion of sidewalk along NE 69<sup>th</sup> Street that will not be located within the public right-of-way. (See Transportation Finding 2)
- A-7 The applicant shall provide recorded temporary access easements for the temporary access road on the affected adjoining properties prior to approval of the final engineering plans. (See Transportation Finding 3)
- A-8 Proposed intersections and driveways shall be constructed accordance with the sight distance requirements of CCC 40.350.030(B) (8). (See Transportation Finding 4)
- A-9 The applicant has volunteered to provide appropriate traffic calming devices on the partial width road along the site's northern property line. The Clark County Public works Department shall evaluate the need for, and adequacy of any such measures with the review and approval of the final construction plan (See Transportation Finding 6)

**Stormwater**

- A-10 Easements or a covenant acceptable to the county shall be provided to the county for purposes of inspection of privately maintained facilities. (See Stormwater Finding 3)
- A-11 In accordance with Section CCC 40.380.040(C) (1) (h), all lots in the urban area must be designed to provide positive drainage from the bottom of footings to an approved stormwater system. (See Stormwater Finding 3)

- A-12 The applicant shall provide a clear explanation in the construction plans and stormwater report of the measures proposed to prevent contamination of the infiltration facilities by fine grained soil materials during construction. (See Stormwater Finding 3)

**Fire Protection**

- A-13 Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process (see Fire Protection Finding 2).
- A-14 Fire flow in the amount of 2,000 gallons per minute supplied at 20 pounds per square inch (psi) for 2 hours duration is required for this application. A utility review from the water purveyor indicates that the required fire flow is currently available at the site. Additions to water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to final plat approval (see Fire Protection Finding 3).
- A-15 Fire apparatus access is required for this application. The roadways and maneuvering areas as indicated in the application shall meet the requirements of the Clark County Road Standard. The applicant shall provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface capable of supporting the imposed loads of fire apparatus (see Fire Protection Finding 5)
- A-16 Approved fire apparatus turnarounds are required for this project. The provisions for turning around fire apparatus comply with the Clark County Road Standard (see Fire Protection Finding 6)
- A-17 All demolition wastes must be properly disposed consistent with county demolition permit requirements. The applicant shall provide proof of appropriate waste disposal in the form of receipts to the Health Department with requests for confirmation that the conditions for final plat approval have been satisfied. (See Finding Water and Sewer Finding 2)
- A-18 If underground storage tanks exist on the property, they must be identified and decommissioned in place consistent with the Uniform Fire Code under permit from the Fire Marshal. Any leaks or contamination must be reported to Washington State Department of Ecology, and proof of removal or abandonment (of the tank) must be submitted to the Health Department prior to final plat recording. (See Finding Water and Sewer Finding 3)

**B. Conditions that must be met prior to issuance of Building Permits**

**Concurrency**

- B-1 Prior to issuance of any building or grading permits for the development site, the applicant shall obtain written approval from Clark County Department of Public Works of the applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system. (See Transportation Concurrency Finding 6)

**Impact Fees**

- B-2 Exempt**

**C. Conditions that must be met prior to issuance of Occupancy Permits**

**Land Use - Landscaping:**

- C-1 The applicant shall provide the following landscaping scheme per 40.320.010-1 and the specific requirements of CCC 40.520.030 (E).
- a. On the north, the required landscaping schemes are L2 within a 10-foot buffer on eastern section bordering R-18 zone and L2 within a 10 foot buffer along the western section bordering R1-6 zone, except that L3 scheme or a combination of a three foot high berm and L2 screen is required only for the strip north of the bus discharge and waiting area.
  - b. On the east, the required landscaping scheme is L3 within a 10-foot buffer bordering R-18 zone.
  - c. On the south, the required landscaping scheme is L3 within a 20-foot buffer on the section bordering ML zone and L3 within a 10 foot buffer on the section bordering R-7.5 zone.
  - d. On the west, the required landscaping is L3 within a 10-foot buffer. (See Land Use Finding 5)
- C-2 The applicant shall provide landscaping along the site's frontage on NE 69th Street per CCC 40.320.020 (H) (G). The proposed landscaping shall be provided on the south side of the half-width street, within the landscape 10 foot landscape buffer. (See Land Use Finding 6)

**Signs**

- C-3 Any new sign proposed to advertise this development must comply with the applicable sections of CCC 40.310. (See Signs Finding 1)

**Fire Protection**

- C-4 The applicant shall provide one additional fire hydrant on these premises. Fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. Provide and maintain a six-foot clear space completely around every fire hydrant (see Fire Protection Finding 4)

**Transportation**

- C-5 The applicant shall install partial-width improvements to NE 69<sup>th</sup> Street to the standards of an urban neighborhood circulator road in accordance with CCC Table 40.350.030-4 and the Standard Details Manual, Standard Drawing #3. (See Transportation Finding 2)

**Stormwater**

- C-6 In accordance with CCC 40.380.040(C) (3) (b), the applicant may be required to test a representative drywell after completion of the stormwater improvements to verify design infiltration rates. If required, the test results shall be submitted to the county by the project engineer prior to completing construction of the stormwater facilities. Redesign may be required if tested rates are less than those utilized in the design. (See Stormwater Finding 3)

**D. Notes Required on Final Site Plan**

The following notes shall be placed on the final site plan:

**D-1 Light and Glare**

The applicant shall ensure that proposed outdoors lights are shielded downward, and do not cast glare onto neighboring properties in the area. During evening sporting events, all activities should end by 9:30 p.m., and outdoor lights, except for security lighting must be out by 10:00 p.m. (See Land Use Finding 13)

**D-2 Noise**

The applicant shall provide adequate screening (i.e. L2 - with 10-foot buffer landscaping scheme on the south side of NE 69th Street) - except that L3 scheme or a combination of a three foot high berm and L2 screen is required on the strip north of the bus discharge and waiting area, to limit the amount of noise from the bus operations (see Land Use Finding 14).

**D-3 Special set back requirements**

All proposed buildings including the placement of modular structures shall be setback at a minimum, 30 feet from the side and rear lot line. There shall be no evidence of incidental commercial activities taking place within the building per CCC 40.260.070. (See Land Use Finding 17)

**D-4 Archaeological:**

If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines.

**D-5 School Crossing**

To ensure the safety of children residing to the north of the school site and attending the existing elementary school during the construction of the new replacement school, the applicant's contractor shall post signage at a crossing area designating the location for crossing by all students from the direction of the mobile home park. There will be no construction traffic allowed to access this crossing area during those times when students will be going to school in the morning and returning home from school in the afternoon. (See Land Use Finding 16)

**D-6 Future Access**

At such time as the permanent connection is made to NE 71st Street, the County retains the right to eliminate the "temporary" access to SR-503. The applicant should be responsible for all costs associated with eliminating the temporary connection to SR-503 upon the ultimate connection to NE 71<sup>st</sup> Street. The location and design of the future connection shall be subject to a post-decision review and permitting process. (See Concurrency Finding 1)

**D -7 Temporary Access**

The applicant shall obtain a WSDOT permit for the temporary access of extended 69<sup>th</sup> at 503. WSDOT may at that time require removal of the southern parking lot access as part of the NE 69<sup>th</sup> Street access construction, installation of a center median curb on SR 503 to prohibit left turns in and out of 69<sup>th</sup> extended from the southern property line to 71<sup>st</sup>. This would also require additional lighting along the center median. This access will be temporary until the 71<sup>st</sup> access becomes available. If access from the school property to NE 71<sup>st</sup> is obtained prior to construction of NE 69th then WSDOT may not permit the temporary access from 69<sup>th</sup>.

**D - 8 Construction Access**

The District shall not construct any new roads that may have an impact on underground utilities, nor engage in any other activities that would interfere with Greenway Terrace's, or its successor in interest, utility easements. If the construction easement from 71<sup>st</sup> shall prove unfeasible, the applicant shall obtain a 3 months traffic control permit from Clark County Public Works/Transportation during the interim period when SR 503 connection will not be available and all traffic will need to be routed west.

**E. Standard Conditions**

**This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:**

**Site Plans and other land use approvals:**

- E-1 Within 5 years of preliminary plan approval, a Fully Complete application for a building permit shall be submitted.

**Water Wells and Septic Systems:**

- E-2 Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Well/Septic Abandonment Letter" must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy).

**Final Construction / Site Plan Review:**

**E-3 Transportation:**

Prior to construction, the applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 40.350.

**E-4 Stormwater:**

Prior to construction, the applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 40.380.

**E-5 Pre-Construction Conference:**

Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

**E-6 Erosion Control:**

Prior to construction, the applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 40.380.

- E-7 Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.

- E-8 Erosion control facilities shall **not** be removed without County approval.

**E-9 Excavation and Grading:**

Excavation/grading shall be performed in compliance with Appendix Chapter J of the 2003 International Building Code (IBC).

- E-10 Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

**E-11 Landscaping:**

Prior to recording the final site plan, the applicant shall submit a copy of the approved landscape plan(s) for any public right-of-way (if applicable) with a

letter signed and stamped by a landscape architect licensed in the state of Washington certifying that the landscape and irrigation (if any) have been installed in accordance with the attached approved plan(s) and verifying that any plant substitutions are comparable to the approved plantings and suitable for the site.

Dated this \_\_\_\_\_ day of November, 2004

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**J. Richard Forester**  
Hearing Examiner

**NOTE:** *Only the decision and the condition of approval are binding on the applicant, owner or subsequent developer of the subject property as a result of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. There may be requirements of local, state, or federal law, or requirements which reflect the intent of the applicant, the county staff, or the Hearings Examiner, but they are not binding on the applicant as a result of the final order unless included as a condition.*

An **appeal** of any aspect of the Hearing Examiner's decision, except the SEPA determination, may be appealed to the Board of County Commissioners only by a party of record. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The appeal shall be filed with the Board of County Commissioners, 1300 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 40.510.030 (H) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;

3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied, on to prove the error; and,
4. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal also must explain why such evidence should be considered, based on the criteria in subsection 40.510.030(H)(3)(b);
5. A check in the amount of \$279.00 (made payable to the Clark County Board of County Commissioners).